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\*\*\* Bill No. \*\*\*

Introduced By \*\*\*\*\*

By Request of the (Agency or Department)

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**SUBJECT TO CHANGE**

A Bill for an Act entitled: "An Act generally revising laws relating to professional and occupational licensing; amending sections 2-15-1731, 2-15-1734, 2-15-1750, 2-15-1751, 2-15-1756, 2-15-1763, 2-15-1772, 37-10-302, 37-10-304, 37-10-313, 37-11-106, 37-14-301, 37-17-104, 37-18-104, 37-19-101, 37-3-103, 37-3-301, 37-3-302, 37-3-303, 37-3-304, 37-3-306, 37-3-307, 37-3-309, 37-3-315, 37-3-323, 37-3-342, 37-3-343, 37-3-344, 37-3-345, 37-3-346, 37-3-347, 37-3-348, 37-3-349, 37-4-103, 37-4-408, 37-47-351, 37-60-202, 37-60-302, 37-60-303, 37-60-304, 37-7-401, and 37-8-418, MCA; repealing section 37-7-104, MCA; providing an effective date."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 2-15-1731, MCA, is amended to read:

" **2-15-1731. Board of medical examiners.** (1) There is a Montana state board of medical examiners.

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(2) The board consists of 11 members appointed by the governor with the consent of the senate. Appointments made when the legislature is not in session may be confirmed at the next session.

(3) The members are:

(a) five members having the degree of doctor of medicine;

(b) one member having the degree of doctor of osteopathy;

(c) one member who is a licensed podiatrist;

(d) one member who is a licensed nutritionist;

(e) one member who is a licensed physician assistant-certified; and

(f) two members of the general public who are not medical practitioners.

(4) The members having the degree of doctor of medicine may not be from the same county. ~~Each member must be a citizen of the United States.~~ Each member, except for public members, must have been licensed and must have practiced medicine or dietetics-nutrition in this state for at least 5 years and must have been a resident of this state for at least 5 years.

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(5) Members shall serve staggered 4-year terms. A term commences on September 1 of each year of appointment. A member may, ~~upon notice and hearing,~~ be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

{*Internal References to 2-15-1731:*

37-3-102x	37-5-101x	37-6-101x	37-20-201x
37-20-401x	50-6-202x	}	

**Section 2.** Section 2-15-1734, MCA, is amended to read:

" **2-15-1734. Board of nursing.** (1) There is a board of nursing.

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) four registered professional nurses; at least one such member shall have had at least 5 years in administrative, teaching, or supervisory experience in one or more schools of nursing and at least one such member must be currently engaged in the administration,

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supervision, or provision of direct client care. Each

member shall:

(i) be a graduate of an approved school of nursing;

(ii) be a licensed registered professional nurse in  
this state;

(iii) have had at least 5 years' experience in  
nursing following graduation; and

(iv) be currently engaged in the practice of  
professional nursing and have practiced for at least 5  
years.

(b) three practical nurses. Each shall:

(i) be a graduate of a school of practical nursing;

(ii) be a licensed practical nurse in this state;

(iii) have had at least 5 years' experience as a  
practical nurse; and

(iv) be currently engaged in the practice of  
practical nursing and have practiced for at least 5 years.

(c) two public members who are not medical  
practitioners, involved in the practice of nursing or  
employment of nursing, or administrators of Montana health  
care facilities.

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(3) All members shall have been residents of this state for at least 1 year before appointment ~~and be citizens of the United States.~~

(4) All members shall serve staggered 4-year terms, and a member may not be appointed for more than two consecutive terms. The governor may remove a member from the board for neglect of a duty required by law or for incompetency or unprofessional or dishonorable conduct.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

{*Internal References to 2-15-1734:*  
37-8-102x }

**Section 3.** Section 2-15-1750, MCA, is amended to read:

" **2-15-1750. Board of respiratory care practitioners.**

(1) There is a board of respiratory care practitioners. The board consists of five members appointed by the governor. Each member must be a ~~citizen of the United States and a~~ resident of this state. The governor may request advice from the Montana society for respiratory care in making appointments to the board.

(2) The board consists of:

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(a) three respiratory care practitioners, each of whom has engaged in the practice of respiratory care for a period of at least 3 years immediately preceding their appointment to the board. At least one of these members must have passed the registry examination for respiratory therapists administered by the national board for respiratory care and at least one of these members must have passed the entry-level examination for respiratory therapy technicians administered by the national board for respiratory care.

(b) one physician licensed in Montana who has a special interest in the treatment of cardiopulmonary diseases; and

(c) one member of the public who is not a member of a health care profession.

(3) The board is a quasi-judicial board, except that one member of the board need not be an attorney licensed to practice law in this state. Members are appointed, serve, are compensated, and are subject to removal as provided in 2-15-124.

(4) The board is allocated to the department of labor and industry for administrative purposes only as provided in 2-15-121."

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{Internal References to 2-15-1750:  
37-28-102x }

**Section 4.** Section 2-15-1751, MCA, is amended to  
read:

" **2-15-1751. Board of sanitarians.** (1) There is a  
board of sanitarians.

(2) The board shall consist of ~~three~~ five members  
appointed by the governor with the consent of the senate.  
Each member must be a resident of this state, and ~~two~~ three  
of the members must be registered sanitarians. ~~One member~~  
Two members must be from the public and not a ~~sanitarian~~  
sanitarians who shall represent the interests of the public  
at large. Each sanitarian member shall have a minimum of 3  
years of experience practicing as a sanitarian in the state  
of Montana.

(3) Members shall serve staggered ~~for~~ 3-year terms  
that expire on July 1 of a given year. ~~One term shall~~  
~~expire on July 1 of each year.~~

(4) The board is allocated to the department for  
administrative purposes only as prescribed in 2-15-121."

{Internal References to 2-15-1751:  
37-40-101x }

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**Section 5.** Section 2-15-1756, MCA, is amended to read:

" **2-15-1756. Board of public accountants.** (1) There is a board of public accountants.

(2) The board consists of ~~five~~ seven members appointed by the governor. The members are:

(a) ~~three~~ four certified public accountants certified under Title 37, chapter 50, who are certified and actively engaged in the practice of public accounting and who have held a valid certificate for at least 5 years before their appointment. The Montana society of certified public accountants shall submit to the governor annually a list of names of two candidates from which the appointments of these members may be made. However, the governor is not restricted to the names on this list. These members may not be residents of the same county.

(b) one licensed public accountant licensed under Title 37, chapter 50, who is actively engaged in the practice of public accounting and who has held a valid license for at least 5 years before his appointment. When an appointment in this category is necessary, the Montana society of public accountants shall submit to the governor a list of names of two candidates from which the



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appointment may be made. However, the governor is not restricted to the names on this list. If there is no licensed public accountant known by the governor to be qualified and willing to serve in this position, the governor may appoint a certified public accountant meeting the qualifications provided in (2)(a).

(c) ~~one member~~ two members of the general public who ~~is~~ are not engaged in the practice of public accounting.

(3) Each appointment is subject to confirmation by the senate and shall be submitted for consideration at the next regular session following appointment.

(4) The members shall serve staggered 5-year terms. A member may not serve consecutive 5-year terms on the board. A member is eligible for reappointment to the board after 1 year or more has elapsed. The governor may, ~~after a hearing,~~ remove a member for neglect of duty or other just cause.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

{Internal References to 2-15-1756:  
2-7-501x            37-50-101x }

**Section 6.** Section 2-15-1763, MCA, is amended to read:

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" 2-15-1763. Board of professional engineers and professional land surveyors. (1) There is a board of professional engineers and professional land surveyors.

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) five professional engineers who have been engaged in the practice of engineering for at least 12 years and who have been in responsible charge of engineering teaching or important engineering work for at least 5 years and licensed in Montana for at least 5 years. No more than two of these members may be from the same branch of engineering-i

(b) two professional and practicing land surveyors who have been engaged in the practice of land surveying for at least 12 years and who have been in responsible charge of land surveying or important land surveying work for at least 5 years and licensed in Montana for at least 5 years;

(c) two representatives of the public who are not engaged in or directly connected with the practice of engineering or land surveying.

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(3) Each member must be a ~~citizen of the United States and a~~ resident of this state. A member, after serving three consecutive terms, may not be reappointed.

(4) (a) Except as provided in subsection (4)(b), each member shall serve for a term of 4 years.

(b) The governor may remove a member for misconduct, incompetency, or neglect of duty or for any other sufficient cause and may shorten the term of one public member so that it is not coincident with the term of the other public member.

(5) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121."

{Internal References to 2-15-1763:  
37-67-101x 70-22-103x }

**Section 7.** Section 2-15-1772, MCA, is amended to read:

" **2-15-1772. Board of athletics.** (1) There is a board of athletics.

(2) The board consists of ~~three~~ five members appointed by the governor with the consent of the senate.

(3) Members shall serve staggered 3-year terms, and a member may not serve more than four consecutive terms.

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(4) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121."

{*Internal References to 2-15-1772:*  
23-3-301x }

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**Section 8.** Section 37-3-103, MCA, is amended to read:

**" 37-3-103. Exemptions from licensing requirements.**

(1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if the physician has any established or regularly used hospital connections in this state or maintains or is provided with, for the physician's regular use, an office or other place for rendering the services, the physician must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

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(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(g) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(h) the practice of medicine by a physician licensed in another state and employed by the federal government  
~~performance by commissioned medical officers of the United States public health service or of the United States department of veterans affairs of their lawful duties in this state as officers;~~

(i) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives  
~~under the supervision of a licensed physician;~~

(j) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be

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licensed if the physician otherwise engages in the practice of medicine in the state of Montana.

(k) the rendering of services by a ~~physical therapist,~~ technician, medical assistant, as provided in 37-3-104, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(l) the rendering of services by a physician assistant-certified in accordance with Title 37, chapter 20;

(m) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;

(n) the execution of a death sentence pursuant to 46-19-103;

(o) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. Except as authorized in 37-27-302, a

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direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

(p) the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5.

(2) Licensees referred to in subsection (1) who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D.", "D.O.", or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

{*Internal References to 37-3-103:*

37-3-342x          37-26-301x }

**Section 9.** Section 37-3-301, MCA, is amended to read:

" **37-3-301. License required -- kinds of ~~certificates~~ licenses.** (1) Before being issued a license, an applicant may not engage in the practice of medicine in this state.

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(2) The department may issue four ~~forms of~~  
~~certificates of licensure~~ kinds of licenses under the  
board's seal: the physician's ~~certificate~~ license, the  
~~restricted~~ specialized certificate license, the temporary  
~~certificate license~~, and the telemedicine ~~certificate~~  
license issued in accordance with 37-3-341 through 37-3-  
349. The physician's ~~certificate~~ license and the ~~restricted~~  
~~certificate~~ specialized license must be signed by the  
president, but the temporary ~~certificate~~ license may be  
signed by any board member. The board shall decide which  
~~certificate~~ kind of license to issue. ~~These certificates~~  
~~must be designated as:~~

- ~~—— (a) physician's certificate, which is subject to~~  
~~renewable registration in accordance with department rules;~~
- ~~—— (b) restricted certificate;~~
- ~~—— (c) temporary certificate, which is subject to~~  
~~specifications and limitations imposed by the board; and~~
- ~~—— (d) telemedicine certificate."~~

{Internal References to 37-3-301:

37-3-342x	37-3-342x	37-3-343x	37-3-343x
37-3-343x	}		

**Section 10.** Section 37-3-302, MCA, is amended to  
read:



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" 37-3-302. **Certificate License to specify practice permitted.** The ~~certificates~~ licenses issued shall state the extent and character of the practice that is permitted and shall be in the form prescribed by the board. Neither the privileges granted to nor the obligations imposed upon licensees may be altered except by legislative enactment or by action of the board duly authorized hereunder."  
{Internal References to 37-3-302: None }

**Section 11.** Section 37-3-303, MCA, is amended to read:

" 37-3-303. **Practice authorized by physician's certificate license.** A physician's ~~certificate~~ license authorizes the holder to perform one or more of the acts embraced in 37-3-102(8) in a manner reasonably consistent with the holder's training, skill, and experience."  
{Internal References to 37-3-303: None }

**Section 12.** Section 37-3-304, MCA, is amended to read:

" 37-3-304. **Practice authorized by temporary certificate license.** (1) A temporary ~~certificate~~ license, ~~which may be issued to any citizen or to an alien otherwise qualified for a physician's certificate,~~ authorizes the

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holder to perform one or more of the acts listed in 37-3-102(8) in a manner reasonably consistent with the holder's training, skill, and experience, subject to all specifications, conditions, and limitations imposed by the board.

(2) A temporary ~~certificate~~ license may not be issued for a period that exceeds 1 year. However, except as provided in subsection (3), a temporary ~~certificate~~ license may be renewed, at the board's discretion, for additional 1-year periods but may not be renewed more than five times.

(3) A person meeting the requirements of 37-3-305(5) may be granted a limited temporary ~~certificate~~ license for a period of 3 months, which may be extended at the board's discretion upon a showing of good cause for a period not to exceed 3 months."

{Internal References to 37-3-304: None }

**Section 13.** Section 37-3-306, MCA, is amended to read:

" **37-3-306. Physician's ~~certificate~~ license -- examination -- reciprocity and endorsement.** (1) The board may authorize the department to issue to an applicant a physician's ~~certificate~~ license, ~~certificate~~ license by

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reciprocity, or ~~certificate~~ license by endorsement only on the basis of:

(a) passing an examination given and graded by the department, subject to 37-1-101;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, by the national board of examiners for osteopathic physicians and surgeons, incorporated, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school which has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by this board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were, in the judgment of the board, essentially equivalent to those of this state for granting a license to practice medicine, if under the scope of the license or certificate

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the applicant was authorized to practice medicine in the other state, territory, or country.

(2) No applicant who applies for a license on the basis of an examination and fails the examination may be granted a license based on credentials from another state, territory, or foreign country or on a certificate issued by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors.

(3) The board may adopt reciprocity or endorsement requirements current with changes in standards in the practice of medicine.

(4) The board may, in the case of an applicant for admission by reciprocity or endorsement, require a written or oral examination of the applicant.

(5) The board may require that graduates of foreign medical schools pass an examination given by the education council for foreign medical graduates or successors.

(6) Holders of the degree of doctor of osteopathy granted in 1955 or before will be certified only on the basis of taking and passing the examination given by the department, subject to 37-1-101. Holders of the degree of

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doctor of osteopathy granted after 1955 will be ~~certified~~  
licensed in the same manner as provided above for  
physicians."

{Internal References to 37-3-306: None }

**Section 14.** Section 37-3-307, MCA, is amended to  
read:  
" **37-3-307. Qualifications for licensure -- temporary  
~~certificate~~ license.** (1) The board may authorize the  
department to issue to an applicant a temporary ~~certificate~~  
license to practice medicine on the basis of:

(a) passing an examination given and graded by the  
department, subject to 37-1-101;

(b) certification of record or other certificate of  
examination issued to or for the applicant by the national  
board of medical examiners or successors, by the federation  
licensing examination committee or successors, by the  
national board of osteopathic medical examiners or  
successors, or by the medical council of Canada or  
successors if the applicant is a graduate of a Canadian  
medical school which has been approved by the medical  
council of Canada or successors, certifying that the  
applicant has passed an examination given by the board; or

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(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were essentially equivalent, in the judgment of the board, to those of this state at the time for granting a license to practice medicine; and

(d) being a graduate of an approved medical school who has completed 1 year of internship or its equivalent and being of good moral character and good conduct.

(2) The board may require that graduates of foreign medical schools pass the examination given by the education council for foreign medical graduates or successors.

(3) A temporary ~~certificate~~ license may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may authorize the department to issue a temporary ~~certificate~~ license subject to terms of probation or other conditions or limitations set by the board or may refuse a temporary ~~certificate~~ license to a person who has committed unprofessional conduct. The issuance of a temporary

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~~certificate~~ license does not impose any future obligation or duty on the part of the board to grant full licensure or to renew or extend the temporary ~~certificate~~ license. The board may, in the case of an applicant for a temporary ~~certificate~~ license, require a written, oral, or practical examination of the applicant."

{*Internal References to 37-3-307: None*}

**Section 15.** Section 37-3-309, MCA, is amended to read:

" **37-3-309. Application for license.** (1) A person desiring a license to practice medicine shall make application to the department, verified by oath and in a form prescribed by the board. The application must be accompanied by the license fee and documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by this chapter apart from an examination required by the board. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the qualifications and whether the applicant has committed unprofessional conduct. The applicant shall provide necessary authorizations for the

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release of records and information pertinent to the department's inquiry.

(2) An applicant for a license on the basis of an examination shall file the application at least 60 days prior to the announced date of the examination. If the applicant is not at the time of filing the application a graduate of but is then in attendance at an approved medical school, the applicant shall submit to the department, instead of a diploma or other required evidence of graduation, a written statement from the dean or other authorized representative of the approved medical school that the applicant will receive a diploma at the end of the then-current school term. The applicant may not be granted a ~~certificate~~ license until the applicant has filed with the department a diploma or other acceptable evidence of graduation from the approved medical school and has complied with the requirements of subsection (1). A license may not be issued until the applicant has satisfied the board that the applicant has completed at least 1 year of an approved internship or its equivalent and has otherwise met the requirements for the issuance of a license under this chapter."

{Internal References to 37-3-309: None }



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**Section 16.** Section 37-3-315, MCA, is amended to read:

" 37-3-315. **Qualifications for licensure -- ~~restricted~~ certificate specialized license -- suspension -- practice authorized.** (1) A person may not be granted a ~~restricted~~ specialized license to practice medicine in this state unless the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school or college of osteopathic medicine;

(c) is licensed and engaged in the active practice of medicine or osteopathic medicine in another state or foreign country, whose licensing standards are acceptable to the board;

(d) has never been subject to license discipline in any form;

(e) demonstrates evidence of research and publication:

(i) in a peer-reviewed medical journal in the English language;

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(ii) in the 2 years preceding receipt of the application; and

(iii) that demonstrate the applicant's competency in the field of medicine in which the ~~restricted~~ specialized license is requested;

(f) has been accepted for privileges in a hospital pending licensure by the board;

(g) has demonstrated to the satisfaction of the board the applicant's knowledge, skills, and abilities by providing evidence of at least one of the following criteria:

(i) at least 3 years' postgraduate clinical training in a formal education program;

(ii) board certification in a specialty recognized or certified by the American board of medical specialties;

(iii) board certification in a specialty recognized or certified by the American osteopathic association; or

(iv) passing, in the 75th percentile or higher, a board-approved state or national examination in medicine, such as the United States medical licensing examination, the comprehensive osteopathic medical licensing examination, the special purpose examination, the comprehensive osteopathic medical variable-purpose

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examination, an examination given by the educational commission for foreign medical graduates, or the licensing examination of another state or territory of the United States or Canada;

(h) has submitted a completed application file, which has been reviewed by the board, and has made a personal appearance before the board; and

(i) is able to communicate, in the opinion of the board, in the English language. Passing an examination given by the educational commission for foreign medical graduates or the test of English as a foreign language constitutes prima facie evidence of ability to communicate in the English language.

(2) The ~~restricted~~ specialized license is suspended and subject to revocation after a hearing pursuant to the Montana Administrative Procedure Act upon one of the following:

(a) restriction, termination, or other cessation of the licensee's hospital privileges; or

(b) proof of one of the conditions or offenses identified in 37-3-323.

(3) The holder of a ~~restricted~~ specialized license is limited to the practice of medicine specifically approved

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by the board after consideration of the applicant's training, skill, and experience. All restrictions, specifications, conditions, and limitations imposed by the board must be stated on the ~~restricted certificate~~ specialized license."

{Internal References to 37-3-315: None }

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**SUBJECT TO CHANGE**

**Section 17.** Section 37-3-323, MCA, is amended to read:

" **37-3-323. Revocation or suspension of license.** (1)

The department may make an investigation whenever it is brought to its attention that there is reason to suspect that a person having a license ~~or certificate~~ to practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured a license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and has not later been lawfully declared competent, or has a condition that impairs the person's intellect or judgment to the extent that it incapacitates the person for the safe performance of professional duties;

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(b) has been guilty of unprofessional conduct;

(c) has practiced medicine with a suspended or  
revoked license;

(d) has had a license to practice medicine suspended  
or revoked by any licensing authority for reasons other  
than nonpayment of fees; or

(e) while under probation has violated its terms.

(2) The investigation must be for the purpose of  
determining the probability of the existence of these  
conditions or the commission of these offenses and may,  
upon order of the board, include requiring the person to  
submit to a physical examination or a mental examination,  
or both, by a physician or physicians selected by the board  
if it appears to be in the best interests of the public  
that this evaluation be secured. The board may examine and  
scrutinize the hospital records and reports of a licensee  
as part of the examination, and copies must be released to  
the board on written request.

(3) If a person holding a license to practice  
medicine under this chapter is by a final order or  
adjudication of a court of competent jurisdiction adjudged  
to be mentally incompetent, to be addicted to the use of  
addictive substances, or to have been committed pursuant to

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53-21-127, the person's license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until the person is discharged as restored to reason or cured and the person's professional competence has been proved to the satisfaction of the board."

{Internal References to 37-3-323:  
37-3-315x }

**Section 18.** Section 37-3-342, MCA, is amended to read:

" **37-3-342. Definition -- scope of practice allowed by telemedicine ~~certificate~~ license.** (1) As used in 37-3-301 and 37-3-341 through 37-3-349, "telemedicine" means the practice of medicine, as defined in 37-3-102, by a physician located outside the state who performs an evaluative or therapeutic act relating to the treatment or correction of a patient's physical or mental condition, ailment, disease, injury, or infirmity and who transmits that evaluative or therapeutic act into Montana through any means, method, device, or instrumentality under the following conditions:

(a) The information or opinion is provided for compensation or with the expectation of compensation.

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(b) The physician does not limit the physician's services to an occasional case.

(c) The physician has an established or regularly used connection with the state, including but not limited to:

(i) an office or another place for the reception of a transmission from the physician;

(ii) a contractual relationship with a person or entity in Montana related to the physician's practice of medicine; or

(iii) privileges in a Montana hospital or another Montana health care facility, as defined in 50-5-101.

(2) As used in 37-3-301 and 37-3-341 through 37-3-349, telemedicine does not mean:

(a) an act or practice that is exempt from licensure under 37-3-103;

(b) an informal consultation, made without compensation or expectation of compensation, between an out-of-state physician and a physician or other health care provider located in Montana;

(c) the transfer of patient records, independent of any other medical service and without compensation;

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(d) communication about a Montana patient with the patient's physician or other health care provider who practices in Montana, in lieu of direct communication with the Montana patient or the patient's legal representative;

(e) diagnosis of a medical condition by a physician located outside the state, based upon an x-ray, cardiogram, pap smear, or other specimen sent for evaluation to the physician outside the state by a health care provider in Montana; or

(f) a communication from a physician located outside Montana to a patient in Montana in collaboration with a physician or other health care provider licensed to practice medicine in Montana."

{Internal References to 37-3-342:

37-3-301*x	37-3-341*x	37-3-342*x	37-3-342*x
37-3-343*x	37-3-343*x	37-3-344*x	37-3-347*x

}

**Section 19.** Section 37-3-343, MCA, is amended to read:

" **37-3-343. Practice of telemedicine prohibited without ~~certificate~~ license -- scope of practice limitations -- violations and penalty.** (1) A physician may not practice telemedicine in this state without a



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telemedicine ~~certificate~~ license issued pursuant to 37-3-301 and 37-3-341 through 37-3-349.

(2) A telemedicine ~~certificate~~ license authorizes an out-of-state physician to practice telemedicine only with respect to the specialty in which the physician is board-certified or meets the current requirements to take the examination to become board-certified and on which the physician bases the physician's application for a telemedicine ~~certificate~~ license pursuant to 37-3-345(2).

(3) A telemedicine ~~certificate~~ license authorizes an out-of-state physician to practice only telemedicine. A telemedicine certificate does not authorize the physician to engage in the practice of medicine while physically present within the state.

(4) A physician who practices telemedicine in this state without a telemedicine ~~certificate~~ license issued pursuant to 37-3-301 and 37-3-341 through 37-3-349, in violation of the terms or conditions of that ~~certificate~~ license, in violation of the scope of practice allowed by the ~~certificate~~ license, or without a physician's ~~certificate of licensure~~ license issued pursuant to 37-3-301(2)(a), is guilty of a misdemeanor and on conviction shall be sentenced as provided in 37-3-325."

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{Internal References to 37-3-343:

37-3-301*x	37-3-341*x	37-3-342*x	37-3-342*x
37-3-343*x	37-3-343*x	37-3-344*x	37-3-347*x

}

**Section 20.** Section 37-3-344, MCA, is amended to  
read:

" 37-3-344. ~~Application for telemedicine certificate~~  
license. (1) A person desiring a telemedicine ~~certificate~~  
license shall apply to the department and verify the  
application by oath, in a form prescribed by the board.

(2) The application must be accompanied by:

(a) a ~~certificate~~ license fee prescribed by board  
rule; and

(b) documents required by the board that establish  
that the applicant possesses the qualifications prescribed  
by 37-3-341 through 37-3-349 and the rules of the board.  
The burden of proof is on the applicant, but the department  
may make an independent investigation to determine whether  
the applicant possesses the requisite qualifications.

(3) The application must include a clear statement  
that the applicant consents to the jurisdiction of the  
state as specified in 37-3-349.

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(4) The applicant shall provide to the board authorizations necessary for the release of records and other information required by the board."

{Internal References to 37-3-344:

37-3-301*x	37-3-341*x	37-3-342*x	37-3-342*x
37-3-343*x	37-3-343*x	37-3-344*x	37-3-347*x
37-3-349x	}		

**Section 21.** Section 37-3-345, MCA, is amended to read:

" **37-3-345. Qualifications for telemedicine**  
**~~certificate~~ license -- basis for denial.** The board may not grant a telemedicine ~~certificate~~ license to a physician unless the physician has established under oath that the physician:

(1) has a full, active, unrestricted ~~certificate~~ or license to practice medicine or osteopathic medicine in another state or territory of the United States or the District of Columbia;

(2) is board-certified or meets the current requirements to take the examination to become board-certified in a medical specialty pursuant to the standards of, and approved by, the American board of medical specialties or the American osteopathic association bureau of osteopathic specialists;

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(3) has no history of disciplinary action or limitation of any kind imposed by a state or federal agency in a jurisdiction where the physician is or has ever been licensed to practice medicine;

(4) is not the subject of a pending investigation by a state medical board or another state or federal agency;

(5) has no history of conviction of a crime related to the physician's practice of medicine;

(6) has submitted proof of current malpractice or professional negligence insurance coverage in the amount to be set by the rules of the board;

(7) has not paid, or had paid on the physician's behalf, on more than three claims of professional malpractice or negligence within the 5 years preceding the physician's application for a telemedicine ~~certificate~~ license;

(8) has identified an agent for service of process in Montana who is registered with the secretary of state and the board and who may be a physician ~~certified~~ licensed to practice medicine in this state;

(9) has paid an application fee in an amount set by the rules of the board; and

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(10) has submitted as a part of the application form a sworn statement attesting that the physician has read, understands, and agrees to abide by Title 37, chapters 1 and 3, and the administrative rules governing the practice of medicine in Montana."

{Internal References to 37-3-345:

37-3-301*x	37-3-341*x	37-3-342*x	37-3-342*x
37-3-343*x	37-3-343x	37-3-343*x	37-3-344*x
37-3-347x	37-3-347*x	37-3-348x }	

**Section 22.** Section 37-3-346, MCA, is amended to read:

" **37-3-346. Certificate License renewal -- fee.** (1) A physician ~~certified~~ licensed to practice telemedicine shall renew the telemedicine ~~certificate~~ license every 2 years.

(2) The physician shall complete and return an application for renewal provided by the board by a date established by board rule.

(3) The physician shall pay an application renewal fee in an amount established by board rule.

(4) This section may not be interpreted to conflict with 37-1-138."

{Internal References to 37-3-346:

37-3-301*x	37-3-341*x	37-3-342*x	37-3-342*x
37-3-343*x	37-3-343*x	37-3-344*x	37-3-347*x
}			

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**Section 23.** Section 37-3-347, MCA, is amended to read:

" **37-3-347. Reasons for denial of certificate license**  
**-- alternative route to licensed practice.** (1) The board may deny an application for a telemedicine ~~certificate~~ license if the applicant:

(a) fails to demonstrate that the applicant possesses the qualifications for a ~~certificate~~ license required by 37-3-341 through 37-3-349 and the rules of the board;

(b) fails to pay a required fee;

(c) does not possess the qualifications or character required by this chapter; or

(d) has committed unprofessional conduct.

(2) A physician who does not meet the qualifications for a telemedicine ~~certificate~~ license provided in 37-3-345 may apply for a physician's license in order to practice medicine in Montana."

*{Internal References to 37-3-347:*

37-3-301*x	37-3-341*x	37-3-342*x	37-3-342*x
37-3-343*x	37-3-343*x	37-3-344*x	37-3-347*x}

**Section 24.** Section 37-3-348, MCA, is amended to read:

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" 37-3-348. Discipline of physician with telemedicine  
~~certificate~~ license. A physician granted a telemedicine  
~~certificate~~ license may be subject to investigation and  
discipline on the grounds that the physician has:

(1) committed unprofessional conduct, as described in  
37-1-316 or in a board rule; or

(2) failed to:  
(a) maintain the qualifications provided in 37-3-345  
or in a board rule;

(b) maintain complete, legible patient records in  
written or readily retrievable electronic form;

(c) make complete, legible patient records available  
to the board during an investigation or disciplinary  
proceeding concerning the physician's practice of  
telemedicine; or

(d) appear and testify at a deposition within the  
state in the course of an investigation or disciplinary  
proceeding conducted under Montana law that concerns the  
physician's practice of telemedicine."

{Internal References to 37-3-348:

37-3-301*x	37-3-341*x	37-3-342*x	37-3-342*x
37-3-343*x	37-3-343*x	37-3-344*x	37-3-347*x
}			

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**Section 25.** Section 37-3-349, MCA, is amended to read:

" **37-3-349. Consent to jurisdiction.** A physician granted a telemedicine ~~certificate~~ license shall, pursuant to 37-3-344, consent to the jurisdiction of:

(1) the courts of Montana for the purpose of civil actions, including but not limited to tort, contract, and equitable actions, related to the physician's practice of telemedicine;

(2) the courts of Montana for the purpose of criminal actions related to the physician's practice of telemedicine;

(3) the board for the purposes of licensing and disciplinary action by the board; and

(4) the Montana medical legal panel for matters within the panel's jurisdiction, as provided in Title 27, chapter 6."

{*Internal References to 37-3-349:*

37-3-301x	37-3-341x	37-3-342x	37-3-342x
37-3-343x	37-3-343x	37-3-344x	37-3-344x
37-3-347x	}		

**Section 26.** Section 37-4-103, MCA, is amended to read:



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" **37-4-103. Exemptions.** (1) A dental laboratory or dental technician is not practicing dentistry under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions on which the work is constructed have been made by a regularly licensed and practicing dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician ~~or surgeon~~ or to a dental surgeon ~~of the United States army, navy, public health service, or veterans' bureau~~ employed by the federal government or to a ~~legal~~ legally licensed health care practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists or to a licensed dental hygienist performing an act authorized under 37-4-401 or 37-4-405.

(3) This chapter does not prevent a bona fide faculty member of a school, college, or department of a university recognized and approved by the board from performing dental

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procedures necessary to the faculty member's teaching functions. This chapter does not prevent students from performing dental procedures under the supervision of a bona fide instructor of a school, college, or department of a university recognized and approved by the board if the dental procedures are a part of the assigned teaching curriculum.

(4) This chapter does not prohibit or require a license with respect to the practice of dentistry under the conditions and limitations defined by Title 37, chapter 29. None of the regulations contained in this chapter apply to a person engaged in the lawful practice of dentistry.

(5) This chapter does not require the licensure of or prohibit the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist from contracting with a dentist to manage the dental practice at an establishment where dental operations, oral surgery, or dental services are provided if the personal representative in either case complies with the provisions of 37-4-104.

(6) Section 37-4-101(2)(b) does not prevent a licensee from entering into a contract with or being employed by the following clinics:

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(a) university clinics for the purpose of providing dental care to registered students;

(b) correctional facilities for the purpose of providing dental care to inmates; and

(c) federally funded community health centers, migrant health care centers, or programs for health services for the homeless established pursuant to the Public Health Service Act, 42 U.S.C. 254b.

(7) A clinic that employs or otherwise contracts with a dentist under subsection (6) may not:

(a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product, process, or activity as it relates to the delivery of dental care; or

(b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care.

(8) This chapter does not require licensure of the following individuals while engaged in the practice of dentistry, as provided in 37-4-101:

(a) students of an accredited commission on dental accreditation (CODA) dental hygiene program or school who

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are candidates for a dental hygiene degree and who practice dental hygiene without pay in strict conformity with the laws and rules of this state, under the direct personal supervision of a demonstrator or teacher who is a faculty member of an accredited CODA dental hygiene program or school;

(b) students of an accredited CODA program or school who are candidates for a D.D.S. or D.M.D. degree and who practice dentistry without pay in strict conformity with the laws and rules of this state, under the direct personal supervision of a demonstrator or teacher who is a faculty member of a CODA dental program or school; or

(c) dental residents who have received a D.D.S. or D.M.D. degree from a CODA-accredited school and who are engaged in advanced education in dentistry at a dental school, hospital, or public health facility that offers the type of advanced program designed to meet accreditation requirements established by CODA. A dental resident may perform all clinical services within the advanced education program in which the dental resident is enrolled if the services are provided by the sponsoring institution and are authorized by the program supervisor. A dental resident who

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is not licensed in Montana may not engage in private  
practice or assess fees for clinical services rendered."

{Internal References to 37-4-103:  
37-4-327\*x }

**Section 27.** Section 37-4-408, MCA, is amended to  
read:

**" 37-4-408. Auxiliary personnel -- employment, duties,  
and limitations.** A dental auxiliary is a person other than  
a licensed dental hygienist employed by a licensed dentist.  
The board may, within the limitations of this chapter,  
adopt rules that define the qualifications and outline the  
tasks of any unlicensed auxiliary personnel to be employed  
by a licensed dentist ~~in the dentist's office~~, except that  
nothing in this section may be construed to allow the board  
by rule to ~~provide for delegation by~~ permit a licensed  
dentist to delegate to any auxiliary personnel prophylaxis  
or any of the duties prohibited to dental hygienists under  
37-4-401 ~~or a prophylaxis~~. The performance of intraoral  
tasks by all dental auxiliaries, as permitted by board  
rules, must be under the direct supervision of a licensed  
dentist."

{Internal References to 37-4-408: None }

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**Section 28.** Section 37-7-401, MCA, is amended to read:

" **37-7-401. Restrictions on prescriptions.** (1) It is unlawful for any authorized prescriber to sell, give to, or prescribe for any person any opium, morphine, alkaloid-cocaine, alpha or beta eucaine, codeine, heroin, or any derivative, mixture, or preparation of any of them, except to a patient believed in good faith to require opium, morphine, alkaloid-cocaine, alpha or beta eucaine, codeine, heroin, or any derivative, mixture, or preparation of the enumerated substances for medical use and in quantities proportioned to the needs of the patient.

(2) A prescription must be written so that it can be compounded by any registered pharmacist. The coding of any prescription is a violation of this section.

(3) A prescription marked "non repetatur", "non rep", or "N.R." cannot be refilled. A prescription marked to be refilled ~~by a specified amount~~ may be filled by any registered pharmacist the number of times marked on the prescription. A prescription not bearing any refill instructions may not be refilled without first obtaining permission from the prescriber. A prescription may not be refilled for more than 1 year from the date it was

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originally ~~filled~~ written. A Schedule II prescription may not be refilled."

{Internal References to 37-7-401:  
37-7-103x            37-7-402x }

**Section 29.** Section 37-8-418, MCA, is amended to read:

**" 37-8-418. Licensed practical nursing -- application fee.** An applicant for a license to practice as a licensed practical nurse shall pay a nonrefundable fee prescribed by the board to the department at the time the application is submitted~~7. which fee shall be returned to the applicant if the application is withdrawn not later than 5 days prior to the date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of an amount prescribed by the board to be retained by the department.~~"

{Internal References to 37-8-418: None }

**Section 30.** Section 37-10-302, MCA, is amended to read:

**" 37-10-302. Examination -- qualifications -- application -- issuance of certificate license.** (1) The board shall adopt rules relative to and governing the

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qualifications of applicants for ~~certificates of~~  
~~registration~~ licensure as optometrists. If the applicant  
does not meet the requirements of the rules, the applicant  
is not eligible to take an examination to practice  
optometry in this state. If the applicant meets the  
requirements of the rules, the applicant must pass an  
examination given by the national board of examiners in  
optometry on behalf of the department, subject to 37-1-101.  
Examinations must be practical in character and designed to  
ascertain the applicant's fitness to practice the  
profession of optometry and must be conducted in the  
English language. The department shall publish and  
distribute the examination requirements for a ~~certificate~~  
license to practice optometry in this state. The board may  
accept the grades an applicant has received in the written  
examinations given by the national board of examiners in  
optometry.

(2) A person is not eligible to receive a ~~certificate~~  
~~of registration~~ license unless that person is 18 years of  
age or older and of good moral character.

(3) A person is not eligible to receive a ~~certificate~~  
~~of registration~~ license unless that person has ~~certificates~~  
~~of graduation~~ graduated from an accredited high school and



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from a school of optometry in which the practice and science of optometry is taught in a course of study ~~covering 8 semesters or 4 years of actual attendance and~~ that is accredited by the international association of boards of examiners in optometry.

(4) A person desiring a ~~certificate of registration~~ license shall file an application, in the manner prescribed by the board, and pay a fee prescribed by the board.

(5) A person who successfully passes the examination administered by the national board of examiners in optometry and who has met the requirements for qualification as an optometrist must be registered in a register kept by the department and, on the payment of a fee prescribed by the board, must receive a ~~certificate of registration~~ license signed by the members of the board."

{Internal References to 37-10-302:  
37-10-304x }

**Section 31.** Section 37-10-304, MCA, is amended to read:

" **37-10-304. Course in use of diagnostic and therapeutic drugs required.** (1) (a) In addition to the requirements of 37-10-302, each person desiring to ~~commence~~ the practice of optometry shall satisfactorily complete a

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~~course prescribed by the board of medical examiners with~~  
~~consultation and approval by the board of optometrists with~~  
particular emphasis on the topical application of  
diagnostic agents to the eye for the purpose of examination  
of the human eye and the analysis of ocular functions.

(b) A person presently licensed to practice optometry  
who wishes to employ diagnostic agents must satisfactorily  
complete a course referred to in subsection (1)(a) and must  
pass an examination as provided in subsection (1)(d).

(c) The course referred to in subsection (1)(a) must  
be conducted by an institution accredited by a regional or  
professional accreditation organization which is recognized  
or approved by the national commission on accrediting or  
the United States commissioner of education. The course  
must also be approved by the board.

(d) The board shall provide for an examination in  
competency in the use of diagnostic drugs and shall issue a  
certificate to those applicants who pass the examination.

(2) (a) Each person desiring to ~~commence the~~ practice  
~~of~~ optometry shall:

(i) pass an examination, of the international  
association of boards of examiners in optometry, on the  
diagnosis, treatment, and management of ocular disease; or

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(ii) take a course and pass an examination in the diagnosis, treatment, and management of ocular diseases. The course and examination must be conducted by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course and examination must also be approved by the board.

(b) A person presently licensed to practice optometry who wishes to employ therapeutic pharmaceutical agents must meet the requirements of subsection (2)(a).

(c) The board shall:

(i) provide for an examination in competency in the diagnosis, treatment, and management of therapeutic pharmaceutical agents; and

(ii) issue a ~~certificate~~ license to an applicant who passes the examination."

{Internal References to 37-10-304: None }

**Section 32.** Section 37-10-313, MCA, is amended to read:

" **37-10-313. Penalty for violations -- deposit of fines.** A person who violates this chapter, except 37-10-

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104, or the rules of the board is guilty of a misdemeanor and on conviction shall be fined not less than \$200 and not more than \$500 or imprisoned in the county jail not exceeding 6 months or both fined and imprisoned. Fines collected, except those collected by a justice's court, shall be deposited in the state general fund ~~special revenue fund for the use of the board, subject to 37-1-101(6)~~." **- DRAFT COPY -**  
**SUBJECT TO CHANGE**

*{Internal References to 37-10-313: None }*

**Section 33.** Section 37-11-106, MCA, is amended to read:

" **37-11-106. Application and administration of topical medications -- prescription, purchasing, and recordkeeping requirements.** (1) A licensed physical therapist may apply or administer topical medications by:

- (a) direct application;
- (b) iontophoresis, a process whereby topical medications are applied through the use of electricity; or
- (c) phonophoresis, a process whereby topical medications are applied through the use of ultrasound.

(2) A licensed physical therapist may apply or administer the following topical medications:

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- (a) bactericidal agents;
- (b) debriding agents;
- (c) anesthetic agents;
- (d) anti-inflammatory agents;
- (e) antispasmodic agents; and
- (f) adrenocortico-steroids.

(3) Topical medications applied or administered by a physical therapist must be prescribed on a specific or standing basis by a licensed medical practitioner authorized to order or prescribe topical medications ~~and must be purchased from a pharmacy certified under 37-7-321.~~ Topical medications dispensed under this section must comply with federal food and drug administration packaging and labeling guidelines ~~developed by the board of pharmacists under Title 37, chapter 7.~~

(4) Appropriate recordkeeping is required of a physical therapist who applies or administers topical medications as authorized in this section."

{*Internal References to 37-11-106:*  
37-11-101x      37-11-107x  
}

**Section 34.** Section 37-14-301, MCA, is amended to read:

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### " 37-14-301. Limitation of license authority --

**exemptions.** (1) A person may not perform x-ray procedures on a person unless licensed or granted a limited permit under this chapter, with the following provisos:

(a) Licensure is not required for:

(i) a student enrolled in and attending a school or college of medicine, osteopathy, podiatry, dentistry, dental hygiene, chiropractic, or radiologic technology who applies x-ray radiation to persons under the specific direction of a person licensed to prescribe examinations or treatment;

(ii) a person administering x-ray examinations related to the practice of dentistry or denturistry if the person is certified by the board of dentistry as having passed an examination testing the person's proficiency to administer x-ray examinations; ~~or~~

(iii) a person who performs only darkroom procedures and is under the supervision of a licensed radiologic technologist or radiologist or is able to show evidence of completion of formal training in darkroom procedures as established by rule; or

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(iv) a person who only operates industrial x-ray equipment that does not involve procedures administered on people.

(b) This chapter may not be construed to limit or affect in any respect the practice of their respective professions by licensed practitioners.

(2) A person licensed as a radiologic technologist may perform x-ray procedures on persons for medical, diagnostic, or therapeutic purposes under the specific direction of a person licensed to prescribe x-ray procedures.

(3) A radiologic technologist licensed under this chapter may inject contrast media and radioactive isotopes (radionuclide material) intravenously upon request of a licensed practitioner. In the case of contrast media, the licensed practitioner requesting the procedure or the radiologist must be immediately available within the x-ray department. Injections must be for diagnostic studies only and not for therapeutic purposes. Except as provided in 37-14-313, permitted injections include peripheral intravenous injections but specifically exclude intra-arterial or intracatheter injections. An uncertified radiologic technologist, a limited permit technician under 37-14-306,

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or an individual who is not licensed or authorized under another licensing act may not perform any of the activities listed in this subsection."

{Internal References to 37-14-301: None }

**Section 35.** Section 37-17-104, MCA, is amended to read:

" **37-17-104. Exemptions.** This chapter does not prevent:

(1) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, or educators, from doing work of a ~~psychological~~ nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "psychology", ~~or~~ "psychologist", "psychological", or "psychologic";

(2) the activities, services, and use of an official title clearly delineating the nature and level of training on the part of a person in the employ of a federal, state, county, or municipal agency or of other political subdivisions or an educational ~~or charitable~~ institution, business corporation, or research laboratory insofar as these activities and services are a part of the duties of



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~~his~~ the office or position ~~with~~ within the confines of the agency or institution;

(3) the activities and services of a student, intern, or resident in psychology pursuing a course of study at an accredited university or college or working in a generally recognized training center if these activities and services constitute a part of ~~his~~ the supervised course of study;

(4) the activities and services of a person who is not a resident of this state in rendering consulting psychological services in this state when these services are rendered for a period which does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the laws of the state or country of ~~his~~ residence to perform these activities and services; however, these persons shall report to the department the nature and extent of the services in this state prior to providing those services if they exceed 10 days in a calendar year;

(5) a person authorized by the laws of the state or country of ~~his~~ the person's former residence to perform activities and services, who has recently become a resident of this state and who has ~~applied~~ submitted a completed application for a license in this state, from performing

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such activities and services pending disposition of his application; and

~~(6) the use of the term "social psychologist" by a person who:~~

~~—— (a) has been graduated with a doctoral degree in sociology or social psychology from an institution and whose credits in sociology or social psychology are acceptable by a recognized educational institution;~~

~~—— (b) has passed comprehensive examinations in the field of social psychology as part of the requirement for the doctoral degree or who has had equivalent specialized training in social psychology; and~~

~~—— (c) has filed with the department a statement of facts demonstrating his compliance with this subsection;~~

~~(7) (6) the offering of lecture services\_ for a fee by a person exempted from licensing requirements by virtue of his employment;~~

~~—— (8) activities of a psychological nature on the part of a person who is a salaried employee of an accredited academic institution, governmental agency, research laboratory, or business corporation if he is performing the duties for which he is employed by the organization within the confines of the organization."~~

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{Internal References to 37-17-104: None }

**Section 36.** Section 37-18-104, MCA, is amended to read:

" **37-18-104. Exemptions -- rules.** (1) This chapter does not apply to:

(a) veterinarians in the performance of their official duties, either civil or military, in the service of the United States unless they engage in the practice of veterinary medicine in a private capacity;

(b) laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state or the United States and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university-Bozeman, or the United States;

(c) lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation;

(d) ~~a veterinarian residing on a border of a neighboring~~ veterinarians practicing in another state and authorized under the laws of that state to practice

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veterinary medicine, whose practice in this state is limited to an "occasional case" as that term is defined in board rule; ~~who is actually called to attend cases in this state but who does not open an office or appoint a place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state;~~

(e) the employment of veterinary medical students who have successfully completed 3 years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association, if the students are employed by and work under the immediate supervision of a veterinarian licensed and registered under this chapter; or

(f) a person advising with respect to or performing acts that the board defines by rule as accepted livestock management practices.

(2) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine are not

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the practice of veterinary medicine within the meaning of this chapter.

(3) Nonsurgical embryo transfers in bovines may be performed under the supervision of a veterinarian licensed and residing in Montana. At a minimum, board rules regarding nonsurgical embryo transfers in bovines must address:

- (a) minimum education requirements;
- (b) minimum requirements of practical experience;
- (c) continuing education requirements;
- (d) limitations on practices and procedures that may be performed by certified individuals;
- (e) the use of specific drugs necessary for safe and proper practice of certified procedures;
- (f) content and administration of the certification test, including written and practical testing;
- (g) application and reexamination procedures; and
- (h) conduct of certified individuals, including rules for suspension, revocation, and denial of certification.

(4) This chapter does not prohibit a person from caring for and treating the person's own farm animals or being assisted in this treatment by the person's full-time employees, as defined in 2-18-601, employed in the conduct

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of the person's business or by other persons whose services are rendered gratuitously in case of emergency.

(5) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at the pharmacist's regular place of business.

(6) This chapter does not prohibit an employee of a licensed veterinarian from performing activities determined by board rule to be acceptable, when performed under the supervision of the employing veterinarian.

(7) This chapter does not prohibit an employee of a licensed veterinarian from rendering care for that veterinarian's animal patients in cases of emergency. Permissible emergency employee activities under this subsection include activities determined by board rule to be acceptable but do not include the performance of surgery or the rendering of diagnoses.

(8) This chapter does not prohibit a certified agency from possessing, or a certified euthanasia technician from administering, any controlled substance authorized by the board for the purpose of euthanasia pursuant to part 6 of this chapter. *(Subsection (8) terminates January 1, 2008-- sec. 11, Ch. 60, L. 2003.)*

*{Internal References to 37-18-104:*

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37-18-102x      37-18-102x      37-18-302x      37-18-502x)  
}

**Section 37.** Section 37-19-101, MCA, is amended to  
read:

" ~~37-19-101. Definitions.~~ Unless the context requires  
otherwise, in this chapter, the following definitions  
apply:

(1) "Arrangements" includes:

(a) planning the details of funeral service,  
including time of service, type of service, and, if  
requested, acquiring the services of clergy;

(b) obtaining the necessary information for filing  
death certificates ~~and obtaining burial-transit permits;~~

(c) comparing or discussing prices, including  
merchandise prices and financial arrangements; and

(d) providing for onsite direction and coordination  
of participants and onsite direction, coordination, and  
facilitation at funeral, graveside, or memorial services or  
rites.

(2) "At-need" arrangements means arrangements made by  
an authorized person on behalf of a deceased.

(3) "Authorizing agent" means a person legally  
entitled to order the final disposition, including burial,

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cremation, entombment, donation to medical science, or other means, of human remains. An authorizing agent is, in order of preference:

(a) a spouse;

(b) a majority of adult children;

(c) a parent;

(d) a close relative of the deceased; or

(e) in the absence of a person or persons listed in

subsections (1)(a) through (1)(d), a personal representative, a public administrator, the deceased through a preneed authorization, or others as designated by board rule.

(4) "Board" means the board of funeral service provided for in 2-15-1743.

(5) "Branch establishment" means a separate facility that may or may not have a suitable visitation room or preparation room and that is owned by, a subsidiary of, or otherwise financially connected to or controlled by a licensed mortuary.

(6) "Cemetery" means any land or structure in this state dedicated to and used or intended to be used for interment of cremated remains or human remains. It may be any one or a combination of a burial park for earth



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interments, a mausoleum for crypt or niche interments, or a columbarium.

(7) "Cemetery company" means an individual, partnership, corporation, or association that:

(a) owns or controls cemetery lands or property and conducts the business of a cemetery; or

(b) applies to the board to own or control cemetery lands or property and conduct the business of a cemetery.

(8) "Closed container" means a container in which cremated remains can be placed and enclosed in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.

(9) "Columbarium" means a room or space in a building or structure used or intended to be used for the interment of cremated remains.

(10) "Cremated remains" means all human remains recovered after the completion of the cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.

(11) "Cremation" means the technical process, using heat, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation.

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(12) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the cremation of human remains.

(13) "Cremation container" means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet substantially all of the following standards:

- (a) be composed of readily combustible materials suitable for cremation;
- (b) be able to be closed in order to provide a complete covering for the human remains;
- (c) be resistant to leakage and spillage;
- (d) be rigid enough for handling with ease; and
- (e) be able to provide protection for the health, safety, and integrity of crematory personnel.

(14) "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.

(15) "Crematory operator" means the person in charge of the licensed crematory facility.

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(16) "Crematory technician" means an employee of a crematory facility who is trained to perform cremations and is licensed by the board.

(17) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person.

(18) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(19) "Embalming" means:

(a) obtaining burial or removal permits or assuming other duties incidental to the practice of embalming;

(b) disinfecting and preserving or attempting to preserve dead human bodies in their entirety or in parts by the use of chemical substances, fluids, or gases ordinarily intended for that use by introducing the chemical substances, fluids, or gases into the body by vascular or hypodermic injection or by direct introduction into the organs or cavities; and

(c) restorative art.

(20) "Funeral directing" includes:

(a) supervising funerals;

(b) the making of preneed or at-need contractual arrangements for funerals;

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(c) preparing dead bodies for burial, other than by embalming;

(d) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and

(e) representing to the public that one is a funeral director.

(21) "Holding facility" means an area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation that must:

- (a) comply with any applicable public health law;
- (b) preserve the dignity of the human remains;
- (c) recognize the health, safety, and integrity of the crematory operator and crematory personnel; and
- (d) be secure from access by anyone other than authorized personnel.

(22) "Human remains" means the body of a deceased person or part of a body or limb that has been removed from a living person, including the body, part of a body, or limb in any stage of decomposition.

(23) "Interment" means any lawful disposition of cremated remains or human remains.

(24) (a) "Intern" means a person who has met the educational and testing requirements for a license to

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practice mortuary science in Montana, has been licensed by the board as an intern and is engaged in the practice of mortuary science under the supervision of a licensed mortician.

(b) For the purposes of this subsection (24), "supervision" means the extent of oversight that a mortician believes an intern requires based upon the training, experience, judgment, and professional development of the intern.

(25) "Lot" or "grave space" means a space in a cemetery used or intended to be used for interment.

(26) "Mausoleum" means a community-type room or space in a building or structure used or intended to be used for the interment of human remains in crypts or niches.

(27) "Mortician" means a person licensed under this chapter to practice mortuary science.

(28) (a) "Mortuary" means a place of business licensed by the board, located in a building or portion of a building having a specific street address or location, containing but not limited to a suitable room for viewing or visitation and a preparation room, and devoted exclusively to activities that are related to the

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preparation and arrangements for funerals, transportation, burial, or other disposition of dead human bodies.

(b) The term includes conducting activities from the place of business referred to in subsection (28)(a) that are incidental, convenient, or related to the preparation of funeral or memorial services or rites or the transportation, burial, cremation, or other disposition of dead human bodies in any area where those activities may be conducted.

(29) "Mortuary science" means the profession or practice of funeral directing and embalming.

(30) "Niche" means a space in a columbarium or mausoleum used or intended to be used for the interment of the cremated remains or human remains of one or more deceased persons.

(31) "Perpetual care and maintenance" means continual and proper maintenance of cemetery buildings, grounds, and lots or grave spaces.

(32) "Preneed arrangements" means arrangements made with a licensed funeral director or licensed mortician by a person on the person's own behalf or by an authorized individual on the person's behalf prior to the death of the person.

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(33) "Temporary container" means a receptacle for cremated remains that is usually made of cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.

(34) "Urn" means a receptacle designed to permanently encase the cremated remains."

{*Internal References to 37-19-101:*

10-2-111x            10-2-111x            10-2-501x }

**Section 38.** Section 37-47-351, MCA, is amended to read:

" **37-47-351. Investigators -- qualifications.** (1) The department may hire investigators to assist the board in investigations and inspections authorized by this chapter.

(2) To qualify as an investigator, a person must:

(a) be a ~~citizen of the United States and be a~~ Montana resident;

(b) have knowledge of outfitting and guiding through prior experience as a licensed outfitter, guide, or professional guide or as a regulator of the outfitting profession; and

(c) have not less than 2 years' experience as a licensed private investigator or as an investigator,

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detective, special agent, or peace officer of a city,  
county, or state or of a federal agency."

{Internal References to 37-47-351: None }

**Section 39.** Section 37-60-202, MCA, is amended to  
read:

" **37-60-202. Rulemaking power.** The board shall adopt  
and enforce rules:

~~(1) specifying the form of and procedure to be used  
in granting, denying, suspending, or revoking any license  
or identification card;~~

~~(2)~~ (1) fixing the qualifications of resident  
managers, qualifying agents, licensees, and holders of  
identification cards, in addition to those prescribed in  
this chapter, necessary to promote and protect the public  
welfare;

~~(3)~~ (2) establishing, in accordance with 37-1-134,  
application ~~and examination~~ fees for original or renewal  
licenses and identification cards, and providing for  
refunding of any fees;

~~(4)~~ (3) prohibiting the establishment of branch  
offices of any licensee, except a proprietary security  
organization, without approval by the board, establishing



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qualification requirements and license fees for those offices;

~~(5)~~ (4) for the certification of private investigator and private security guard training programs, including the certification of firearms training programs and firearms instructors;

~~(5) for the licensure of firearms instructors;~~

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees to file an insurance policy ~~or proof of financial responsibility as the board considers necessary~~ with the board; and

(9) providing for the issuance of probationary identification cards for private investigators who do not meet the requirements for age, employment experience, and written examination."

{Internal References to 37-60-202: None }

**Section 40.** Section 37-60-302, MCA, is amended to read:

" **37-60-302. Qualifying agent and resident manager required -- substitution.** (1) Any ~~person not a resident of this state who~~ out of state contract security company or

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proprietary security organization that applies for a license under this chapter shall, before application to the board, appoint for the duration of the license a qualifying agent and a resident manager. Every qualifying agent and resident manager shall satisfy the appropriate licensing requirements of this chapter.

(2) A resident manager must be appointed for each branch office located in this state, and the business of the applicant or licensee must be conducted under ~~his~~ the resident manager's direct supervision and control.

(3) If a qualifying agent or resident manager for any reason ceases to perform the duties of a qualifying agent or resident manager on a regular basis, the licensee shall promptly notify the board ~~by certified mail~~ of that fact and of the name of a substitute individual, who shall make application to the board for continuation of the license. Pending application by and board action upon the application of the substitute, the board may suspend the license or extend it for a reasonable time."

*{Internal References to 37-60-302: None }*

**Section 41.** Section 37-60-303, MCA, is amended to read:

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" **37-60-303. License qualifications.** (1) Except as provided in subsection (8), an applicant for licensure under this chapter is subject to the provisions of this section and shall submit evidence under oath that the applicant:

(a) is at least 18 years of age;

~~(b) is a citizen of the United States;~~

~~(c)~~ (b) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

~~(d)~~ (c) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

~~(e)~~ (d) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

~~(f)~~ (e) is of good moral character; and

~~(g)~~ (f) has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard shall:

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(a) complete the training requirements of a private security guard training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of the training; and

(b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:

(a) is at least 21 years of age;

(b) has at least a high school education or its equivalent;

(c) has not been dishonorably discharged from any branch of the United States military service;

(d) for a period of not less than 3 years:

(i) has been lawfully engaged in the private investigative business;

(ii) has been lawfully employed as a private investigator ~~or been the holder of a certificate of authority to conduct a private investigative business; or~~

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(iii) has been an investigator, detective, special agent, or peace officer of a city, county, or state government or of the United States government; and

(e) has fulfilled any other requirements as the board may by rule prescribe.

(4) Up to one-half of the experience required by subsection (3)(d) may be met by a combination of education and training as accepted by the board. All college credits must be from an accredited college or university and be verified by transcript.

(5) Applicants who will wear or carry firearms in performance of their duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as it may by rule prescribe.

(6) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.

(7) Except for an applicant subject to the provisions of subsection (8), the board shall require a background investigation of each applicant for licensure under this chapter that includes a fingerprint check by the Montana

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department of justice and the federal bureau of investigation.

(8) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter must be incorporated under the laws of this state or qualified to do business within this state and must be licensed by the board.

~~(b) The board shall establish by rule the license application procedure and application fee for business entities described in subsection (8)(a).~~

~~(c)~~ (b) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (8)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part."

{Internal References to 37-60-303:

37-60-315x      37-60-409x }

**Section 42.** Section 37-60-304, MCA, is amended to read:

" **37-60-304. Licenses -- application form and content.**

(1) Except as provided in 37-60-303(8), an application for a license must be ~~made on a form prescribed by the board~~

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submitted to the department and accompanied by the application fee set by the board.

(2) An application must be made under oath and must include:

(a) the full name and address of the applicant;  
(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, a private investigator, or a private security guard;

(e) one recent photograph of the applicant, of a type prescribed by the ~~board~~ department, and ~~two~~ one classifiable ~~sets~~ set of the applicant's fingerprints;

(f) a statement of the applicant's age and experience qualifications; and

(g) other information, evidence, statements, or documents as may be prescribed by the rules of the board.

(3) The board shall verify the statements in the application and the applicant's moral character.

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(4) The submittal of fingerprints must be a prerequisite to the issuance of a license by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

~~(5) The board shall send written notification to the chief of police, sheriff, and county attorney in whose jurisdiction the principal office of the applicant is to be located that an application has been submitted."~~

{Internal References to 37-60-304: None }

NEW SECTION. **Section 43. {standard} Repealer.** Section 37-7-104, MCA, is repealed.

{Internal References to 37-7-104: None}

NEW SECTION. **Section 44. {standard} Effective date.**  
[This act] is effective July 1, 2005.

-END-